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INDUSTRIAL RESTRUCTURING

THE CASE OF THE CHEMICAL FIBRE INDUSTRY

IN EUROPE

by

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0. Introduction¹

Although industrial restructuring has always existed in some form or another, only in recent years has it received attention as an economic problem, or more specifically as a problem of economic policy. The main reason for this attention is the alarming increase in unemployment in the last years. The growth optimism has gone; at the same time, discussions on how to adjust to the challenging circumstances appeared. These often merely centered around the private-state, deregulation-regulation, market-planning opposition. This is exactly the first point I want to make in this paper: all too often, academic as well as practical dealing with problems of industrial restructuring has been done in a highly normative, polemical and also simplistic way.

The general way of thinking in market-vs-state terms is not only unsatisfactory when it comes studying the economy, but it also does not ease policy-making. To anticipate the conclusion of the case studied, we can say that the ambiguous situation arose, of politicians thinking in terms of and adapting their behaviour to ideological perceptions, while on the other hand the

¹ I am grateful to B. Marin, J. Padiouleau and W. Streeck for valuable comments on earlier drafts of this paper.

industry itself seemed to take a very pragmatic stance in designing its policies. Industry often rejects the "market mechanism" as an organising force whenever this can lead to temporary advantages, without finding itself in trouble ideologically. As far as the politicians are concerned, they are aware of these "temporary practices" by the industry, but interpret them in terms of marginal deviations from the ideal type, i.e. the free market. As will be made clear in the paper, other organizational forms with problem solving capacity may exist. The one found here, i.e. industry self-governance was by the politicians not perceived as such. A specific characteristic of this self-governance meant here is that it always needs some support (organizational, legitimizing, etc.) by the state (in contrast to cartels for example). This support was indeed provided by the EC, but in a rather incremental way and was not put in a broader context. This situation had two main effects: first, the EC working out its own solutions, quite independently from the actions taken by the industry itself but at the same time giving this industry backing for its self-governance plans. Secondly, and following from this first point, the industry solved its problems with the help of the Community without however being asked to take "public" factors into consideration in their restructuring plans and thus finally ending up with a cartel-like solution.

This rather surprising conclusion will now be given support by looking at the restructuring-process of the chemical textile fibre industry (1) ^{*} and the reactions towards it by the industry and the political scenario on an European level.

The case studied will not be submitted to theories on structural adjustment in open-market economies, since no such theories exist - nor will I as yet try to formulate one. The impossibility of relying on established theories for this study will not necessarily make it a narrative one. My intention will go more towards applying sociological concepts, i.e. using more general methods of sociological science in trying to grasp or "verstehen" (M. Weber) the complexity of social phenomena such as, precisely, the restructuring of an industrial branch. All this is not done in order to push the studied problematique to a more abstract level but rather the other way around, to bring in possibilities or tools for enabling one to see what really happens without interpreting it in the all too reductionist terms of market and state (2).

Therefore I will start by drawing the distinction between two alternative modes of social coordination of individual

* for the footnotes, see p.39

activities, market coordination on the one hand and organisational coordination on the other as one of the most important distinctions made in social science in the analysis for social phenomena.

MARKET COORDINATION represents a mechanism of social coordination that rests on a network of actual and potential exchange relations between mutually adjusting but individually deciding actors, a mechanism whose total social results are brought about unintendedly, or, to use A.SMITH's famous phrase, by the "invisible hand". The economic market in the usual sense is the typical field of activities coordinated by such a mechanism. Yet, beyond the "economic field", this type of coordination can be found everywhere in social life.

ORGANISATIONAL ACTION is the term for a situation where the activities of a set of actors are coordinated (by a "visible hand") in order to bring about an intended total result.

The restructuring-processes can now be studied according to these two categories. Industrial restructuring can subsequently be described as a process with an internal logic of its own and/or a policy construction, directed to the attainment of goals. These insight drawn from general sociological theory lead us to distinguish between three categories of restructuring: first, what I would want to call autonomous restructuring,

secondly, what I will mark private and thirdly, public restructuring.

Autonomous restructuring corresponds to the aforementioned "market coordination" logic, being an application of it in a more concrete, research-specific form:

- The autonomous-restructuring category is defined by the structural process of change in the industry which appears as the aggregate result of a large number of uncoordinated decisions by firms.

This model thus holds that restructuring also takes place without any kind of restructuring-policy.

The second mode of social coordination, "organized action", will for my purposes be divided in two different categories: one which is organised privately and one which is organised publicly.

- private restructuring would then be the process of change which is the result of planned, coordinated action of some sector-dominating firms (e.g. cartel) or other industry-specific organisations.
- public restructuring, then, contains the processes of change which are the consequence of policy and planning by the state ("sectoral policy", "Branchenausschuesse", etc.).

The advantage of this methodological starting-point does not lie in the three different categories as such, since they are studied separately (especially autonomous restructuring by economics and industrial economics and public restructuring lately

by students of public policy) but in the fact that they are used in combination for one single case. The separate categories can only be set to full advantage when something about the others is known as well. In addition, very interesting insights in the dynamic of an industrial sector can be gained by studying the how and why of a transit from one restructuring process to another at a certain point in time.

01. The Crisis in the European Chemical Fibre Industry and the Situation Before.

After a first period of rapid growth, a crisis occurred in the West-European chemical fibre industry from 1973 on. The crisis seemed to be a worldwide one but the producers in Western Europe were even worse off than their American or Japanese counterparts. Whereas the decrease in Western-European production was already 19 per cent in 1975, it was "only" 11 per cent in the USA and Japan, and the production in other countries still increased with 6 per cent. A crisis which, for many producers, seemed rather local at the start, but very quickly turned out to be threateningly general. The situation led to major losses for all producers concerned. The losses have subsisted until 1983 (Table 1).

Table 1 : Losses of W. European man-made fibre producers (in millions of DM)

<u>Man-made fibre industry - losses of W. European producers</u>	
(in millions of DM)	
1975	1,800
1976	2,000
1977	2,000
1978	1,100
1979	1,000
1980	1,900
1981	1,200
1982	700
1983	500 (estimated)

Source : COMITEXTIL/CIFRS, 1984, p.2

Every fibre-making and selling company in Europe has been operating at a loss from early in 1973/74 on.

The period preceding this crisis was one of what I would call autonomous restructuring, i.e. the structural process of changings in an industry which appears as the resultant of a large number of uncoordinated, decentralised decisions by firms.

The industrial restructuring generated by such decentralised actions does not, however necessarily coincide with what is perceived to be the behaviour of firms in "perfect competition" - which has to be seen as only one possible outcome, among others, of a process like this.

Historical and structural production-immanent features (3) have shaped the chemical-fibre sector, now characterised by competitive factors such as the qualities of the fibre, its advertising and promotion, technical advice to textile producers, research and development, blending, transfer pricing, large-scale production, etc. The man-made fibre industry's concentrating on these competitive strategies reflects its oligopolistic structure, as does, more strongly so, the fact of price-stability and price leadership (see for illustrations of this argument TISDELL and McDONALD (1979, pp. 47-49), SHAW and SHAW, (1980, pp.220-221) and OPITZ, (1980, pp. 90-100)).

The idea, implicit in equilibrium theory and widespread among many politicians, of competition bringing about acceptable structural change - i.e. competition changing the conditions -

seemed to be unwarranted for the chemical fibre sector. Rather, the opposite was true.

SCHENK (1982, also MUELLER, et.al., 1978 and for the chemical fibre industry in particular, OPITZ, 1980)), argues that overcapacities are related to an increasing oligopolization and internationalization of the industry, which happened to be the case for the chemical fibre sector.

SCHENK points to the fact that internationalization and oligopolization (autonomic growth, fusions (horizontal contraction of decision power) and vertical integration) leads to the elimination of the price-mechanism as a regulator of supply and demand.

He goes on to state that the elimination of the price-mechanism has had as an obvious consequence that the fight for a market share in the last decade has been increasingly dominated by the strive for a realisation of investment leadings. The hole in the market generated by a rise in demand will then be filled several times, overcapacity being the end result. This can also explain why the economic crisis has manifested itself on a specifically international level during the last decade. This frequent filling of the same gap certainly took place in the chemical fibre industry. Even in the midst of the crisis production was increased and new installations were built (Table 2).

Table 2 : Capacity and growth of selected European synthetic-fibre producers, 1974-1976.

Land	1974			1976		
	Auslastung (in Prozent)	Kapazität (in 1000 Tonnen)	Anteil an der EG-Kapazität	Auslastung (in Prozent)	Kapazität (in 1000 Tonnen)	Anteil an der EG-Kapazität
Bundes- republik	85	902	37	77	1 003	36
Groß- britannien	76	523	21	70	590	21
Italien	74	452	19	75	544	20
Frankreich	72	329	13	67	370	13
EG	78	2 425	100	73	2 751	100

Source : OPITZ, 1980, p.110

In the period of observation all suppliers have extended their capacity almost to the same extent, due to which their shares in the EC remained constant. Since the extension surpassed the demand, the capacity-utilization decreased from 78 per cent in 1974 to 73 per cent in 1976.

Other factors were at play too, such as regional investment-programs in this very sector (e.g. in Italy and Ireland) and imports from cheap-labour countries. These two reasons cannot explain, however, why the same evolution can be witnessed in other ripened product markets (cellulosic fibres, for instance), without their inevitably leading up to permanent overcapacities.

At first, producers minimized their losses by rationalizing and restructuring their operations. In other words,

the sector was still left to the 'logic of market' or 'anonymous restructuring' between 1973 and 1976. Rhône-Poulenc, for example, announced the entire or partial closing of 18 chemical-fibre and textile installations during two or four weeks between the first of December 1974 and the 12th of January 1975 (12,000 workers were affected by this measure). In the Netherlands AKZO proceeded to reduce production for 6 plants. Hoechst in Germany announced short-term work for 3 plants during an unlimited time-period. ICI, Du Pont and Glanzstoff reduced capacity as well. Companies in Belgium and Italy however, resorted to public restructuring, being faced with governmental constraints and policies designed to ensure continuing employment for the labour force. These public actions could be held responsible for a delay in the sector's adaption to the market which should exclusively have been one of production reduction; but, as seen before, in the autonomous sphere prevailing in the other countries, production was even increased and new installations were built in 1974 and 1975.

The situation might have led to the complete disappearance of an industry, with large scale capital depletion, subsequent large-scale loss of jobs, the latter having wider social and cultural implications. None of the firms at that moment could be expected to have a strong enough counterinfluence on its environment. Considerations such as these may generate quite another interpretation of the general equilibrium thesis. This theory does not account for losses caused by sub-optimal

employment of resources. Yet, because of the effects mentioned, it may prove worthwhile for the industries to maintain the inventory of capabilities at their disposal. But such a choice brings about the need for some sort of organisational action for coping with this kind of structural crisis. According to my model, this can take on a private or public form. The characteristics of the organisational form which has been adopted in the chemical sector will be examined in the next part.

02. Public or Private Restructuring at European Level?

A. Private Restructuring.

The theoretical difference between the previous 'autonomous' restructuring just mentioned and 'private' or 'public' restructuring centers around the logic used (logic of the market vs. logic of organisation). When I refer to private restructuring I mean a form of 'organisation' of interests or what LAMBERS (1958) would call a form of institutionalisation. When dealing with these forms of restructuring one always has to keep in mind that it does not spring up out of nothing; the reason why it appears or already exists at all should be made an object of study.

However, there is still a big difference between 'private' and 'public' restructuring. Most researchers see nonmarket regulation of firm behaviour as synonymous with direct regulation by the government. But I refer here to one of the least studied but probably most common forms of organisation in economic life. This category of "private restructuring" is an idealtipe category in the same sense and on the same level of abstraction as the "anonymous" and the "public" and NOT an intermediate form of the two. It should not be confused with what is called the "mixed economy". This category is in general part of my "public restructuring" process since "mixed" appears in the

sense of government participation in market processes. Generally speaking, private restructuring refers to cooperation within the business sector. There is a substantial literature on "economic" forms of cooperation, such as cartels, mergers, etc., which should be taken into consideration. There is, however, at least one new body of literature referring to another form of organisation in the private sphere. The "political" cooperation, pointed to in this literature, could be called "collective self-regulation by capitalists" (see e.g. STREECK and SCHMITTER 1984 and the cited literature ibid.) In order to compensate for the shortcomings of, and the self-destructive elements in, the market, and at the same time pre-empt state intervention, capitalists can band together and agree on mutual rules of conduct, limiting their own individual autonomy in their collective long term interests. Or, as STREECK and SCHMITTER put it, "... the 'public use of private organized interests' takes the form of the establishment, under state license and assistance, of 'private interest governments' with devolved public responsibilities - of agencies of regulated self regulation of social groups with special interests that are made subservient to general interests by appropriately designed institutions." (1984, p.21)

Our case now, highlights industry self-regulation as an alternative form of non-market regulation that may supplement or complement direct regulation by the government (in my case the EEC) as I will try to illustrate here. Note, however, that the

previous 'private interest government'-concept as formulated by STREECK and SCHMITTER is only one theoretical possibility - though the best elaborated at this moment -, and probably points to the most "finished" form on a scale of self-regulation. The actions taken by the main chemical-fibre producers have to be located more towards the other end of such a scale, having not such an institutionalised form but nevertheless being characterised by a 'logic of interorganizational concertation' among firms.

From a certain point in time (1976), the idea of cooperation became more attractive for the chemical-fibre producers than competition - or better, individual action. This is especially interesting since, in contrast to other European sectors, the initiative of working out a plan came from the producers themselves - in my words, the envisaged restructuring started off privately instead of publicly. It is the phenomenon which LAMBERS (1958) calls 'internal institutionalisation', by which he means a process of institutionalisation of the market by market-parties who are not pleased with the result of the market mechanism or better, with the logic of the market. "It is the effort to add an instrument by which the market is allowed to drift in the direction of proposed purposes". This is exactly what I mean by the appearance of the 'logic of organisation' or more loosely the 'logic of interorganisational concertation'. It means that the necessity is indicated of transferring the focus of

attention from the single organisation to the larger system of which it is part.

The first question which is then coming up is, why and how should organisations - in my case, firms - define their policy in the context of what TRIST defines as an organisational 'domain'. Usually, the decision to initiate resource reallocation is decentralised to the individual firm.

The fact that the problem of the different chemical-fibre producers was perceived by themselves as a structural problem on the European level can most effectively be explained in terms of, on one side, the focally uncontrollable structural change (i.e. autonomous restructuring) and at the other side, the industry-specific characteristics such as the relative surveyability of the numbers of firms, the homogeneity of the sector, the economic structural factors (cf. BOWMAN (4)), the attention given by the press, the interest it stirred within the EC and, last but not least, the activities of the business association for chemical fibres on an European level, the CIFRS (Comite International de la Rayonne et des Fibres Synthetiques) (5).

In the producers' 'self-regulation' system the CIFRS was brought in as a specific reference organisation i.e. an organisation which is controlled by the member organisations. Theoretically the CIFRS should have the qualities of an aggregate

subsystem, in the sense of its supposed ability to build consensus among the members or to keep the domain together.

Within this organisation an agreement was reached which intended to decrease the capacities of the chemical textile fibres in Europe by 15 per cent up to the 31st of December, 15 per cent being approximatively half of the existing overcapacity. In the withdrawing quotas already reduced capacities of Germany, the Netherlands and Great Britain since 1975, were taken into account. All participators had to restrain from installing new plants, although modernization of the old ones was allowed. The demand-increase expected up to 1981 would be distributed according to the capacity quotas of 1976, uniformly among all participants. This agreement was reached remarkably quickly among the non-Italian producers.

During an interview in Paris in 1984, I have asked a staff-member of the International Chemical Fibre and Rayon Committee how it was possible that the negotiations leading to a restructuring of the chemical-fibre industry between the 11 main producers could have gone as smoothly as they seemed to have, judging from the press-reports, and moreover, how they could have been effective. How was it possible that such giants, normally being very competitive, gave up potential short-term profits, and could trust each other in this productivity-reducing move? The answer was simple. The prisoner's dilemma, the logic of collective action, and the free-rider problem, i.e. those problems

concerning the fact that a strategy of not paying dominates the strategy of paying in a situation where a public good is provided (i.e. a good characterized by the impossibility of exclusion, also of those who did not provide anything to the provision of it) were solution-immanently eliminated. The chemical fibre sector really consists of a set of three different products - nylon, polyester and acrylic (see Annex 1). Producers did not negotiate on decreasing their total production, only on lowering that of their least profitable fibre. The production of that one was often set to null while production of more profitable items was even increased. The next question was then, of course, whether this means the end of the competition in the chemical-fibre sector. The answer was yes and no. Yes, for Europe as a production market, but not for the world market where the Europeans are more successful again. (cf. the industrial policy of France)

This seems to me a case in point of the circumstances in which organised networks can help solve individual problems. From this follows that being a member of such a restructuring circle can bring one individual actor advantages besides collective ones (see for similar conclusions, BRAAM, 1973, Ch. 7 and 10).

At the same time - this is no coincidence, as we shall see - the EC started to worry about the European chemical fibre industry. This triggered the phase of what I choose to call 'public' restructuring on the European level. During the very early stages this happened independently of the private

restructuring objectives, described above. Both however melted into one network from 1976 onwards.

B. Public Restructuring.

Public restructuring has been defined as a process which is the intended or unintended outcome of policy and planning, in the first place, by the state. This is the difference to the other component of the collective-action category, private restructuring, where the producers are mainly the ones who try to reorganize matters.

As mentioned before, public restructuring appeared in the 1970s in Western Europe's chemical fibre industry at two different levels, the national and the international.

The public restructuring at the national level took a very pronounced shape in Belgium, France and Italy whereas the public restructuring-strategies at the EC-level took a much more diffuse form - if we can speak there of a public restructuring.

Let us first give a very short, rather illustrative, picture of the national public restructuring effort before turning to my focal actor, the European Community.

FABELTA, the subsidiary company of the AKZO-group (NL) which had been working at a loss for quite a while, was taken into public ownership in early 1976 as an alternative to the closure of some of its fibre activities.

Likewise, the French state made massive financial outlays to its big three: RHONE-POULENC, CdF-CHIMIE and PIEHINCY UGINE KUHLMANN in order to "eliminate overlapping operations so that they will be better able to compete on an international scale" (Chemical Week, 1974). According to the chairman of the UNION DES INDUSTRIES CHIMIQUES: "the companies now want to complement each other rather than get involved in abnormal competition" (Chemical Week, 1974).

The most striking illustration of national state-intervention was the restructuring of the Milan-based conglomerate MONTEDISON, due to heavy financial losses. In March 1977 the Italian government threatened to suspend its subsidies to MONTEDISON if that company's subsidiary MONTEFIBRE closed its obsolete plants in Piedmont and ceased co-operation in the development of a major fibre complex at Ottana in Sardinia. The plants stayed open and government aid continued, including the payment of the wages by the state for 6000 MONTEFIBRE workers. As plant closure was being prevented by such government interventions, state assistance was at the same time being used to extend synthetic fibre capacity in the case of the Italian industry. Here, obviously, the "national interest" appears: the confluence of the ideological currents that coalesced to refloat MONTEDISON (the trade union movement, the ruling political parties and the private sector) is indicative of this.

This is not the proper place for evaluating these different national policies; we will keep them in mind, however, when turning to the public actions undertaken within the framework of the European Community.

A Short Overview of the Chemical Fibre Case.

As mentioned before, the 1977 situation in the synthetic-fibre sector was one of decreasing demand, excess capacity, numerous new investment projects, a fall in prices and considerable financial losses.

After a discussion of the problems of the chemical-fibre sector during two meetings of the "Senior Officials of Industrial Affairs" (29th of Oct. and 6th of Dec 1976), and after the general turmoil in the EC-Commission concerning the change of the Commissioners at the end of 1976, the new Commissioner for Industrial Affairs DAVIGNON reached a cooperation plan with the producers within the Community. This agreement was finally signed in Brussels between eleven enterprises (BAYER, HOECHST, AKZO, ICI, COURTAULD, RHONE-POULENC, FABELTA, MONTEFIBRE, SIC, ANIC and SNIA; MONSANTO and DU PONT as US subsidiary companies did not participate because of legal problems, but they announced their intention not to "rock the boat").

The agreement, which was valid for three years, included a plan for cutting back capacity to be implemented by June 1979. The aim was a reduction in capacity of the European Community's firms by 400,000 tons or 15 per cent. The remaining capacity was not to be increased before the 31st of December, 1979. Details concerning the capacity to be eliminated and reports on the implementation of the reduction measures were to be communicated to an arbitrator appointed with the agreement of the DG IV (Directorate General for Competition) in the Commission. This cutback plan was accompanied by an agreement on production quotas which took account of the general features of the situation in Italy in order to minimize losses on recent investments. Although Italian output was to be reduced in the short term, non-Italian manufactures undertook as a quid pro quo to allocate to Italy 35 per cent of the increase in demand, estimated at 270,000 ton. The text of this agreement was finally communicated to the Commission on July the 14th 1978.

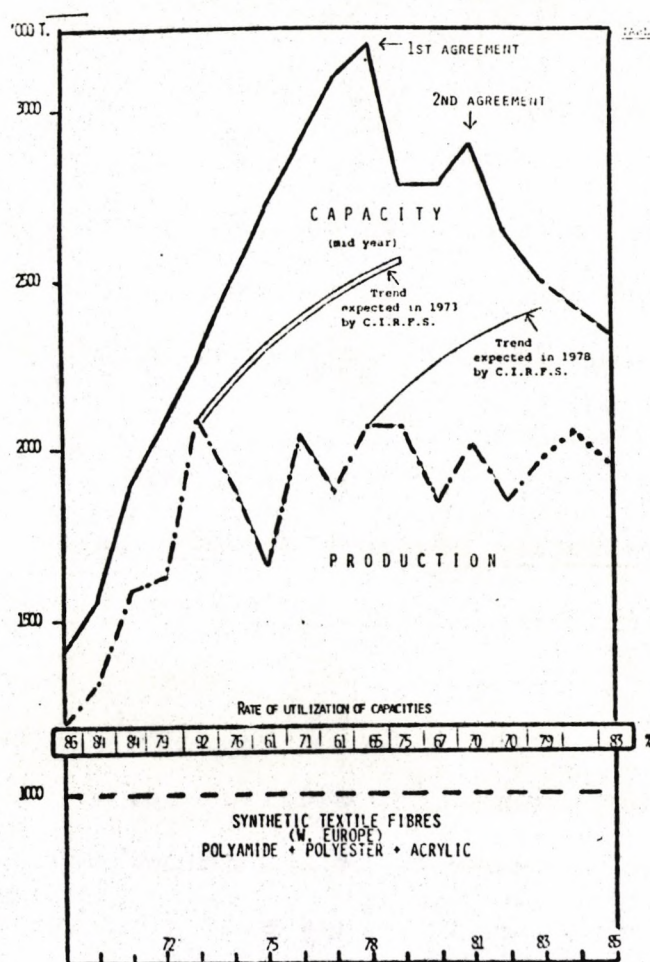
It was understood right from the start that the agreement would have to comply with the rules on competition as established in the Treaty of Rome. In the Commission, the DG IV observed at an early stage that an individual exemption following Article 85(3) (6) was out of the question in view of the impossibility, for a crisis cartel of the scope envisaged, to meet the final condition of that paragraph, being that competition must remain. Nor could the agreement be justified in terms of any of

the escape clauses provided. It did not improve the production of goods, nor did it promote technical or economic progress. It was just an old-fashioned market-sharing agreement and therefore needed a special dispensation from Brussels, which could only be provided by the Council of Ministers acting unanimously. Since this was perceived as very unlikely, not least because of the differences in member states' attitudes to industrial policy but also because of more general criticism to crisis cartels, DAVIGNON (DG III) and VOUEL (DG IV) jointly produced a proposal for a new draft Regulation, which could authorize "crisis cartels", to partition the market and raise prices (7).

The anticipation of problems, especially as a result of the chemical-fibre crisis, by the Directorate of Competition and the Directorate of Industrial Affairs shows that the Commission now really wanted to act. VOUEL saw a chance to use his legal competences in a positive way and DAVIGNON wanted to use this sector, in which cooperation by the industry really seemed to be possible, as a precedent. Parallel to this general possibility for reaching crisis cartels, of which that of the chemical-fibre sector could become the first, it was nevertheless suggested to the fibre firms that they should notify the text of their already reached agreement to the Commission under Regulation No.17, after which they would be able to implement the agreement pending the Commission's decision. This application could, in due course, be transformed into an application for authorization of a crisis

cartel, once the draft regulation had been adopted by the Council of Ministers.

The proposal ran up against strong opposition from a number of members of the Commission and though it had majority support, was - because of the veto-rule in the Council of Ministers - withdrawn in July 1978 after a failed final attempt by JENKINS, the president of the Commission, to placate the opposition (8). The failure of the draft proposal to win Commission support did not mean an immediate end to the cartel. After the producers formally notified the Commission of the cartel in July, they could maintain it legally until it was rejected by the Commission. The rejection came in November 1978 when the Commission reached the conclusion that the notified agreement in its existing form was incompatible with Article 85. The Commission, however, decided not to serve notice on the enterprises concerned, as it could have under Article 15(6) of Regulation No. 17, but instead declared them immune to fines. The impact the cartelization actions had is shown in fig. 1.



Source : CIFRS, 1981, annex

Eighteen months after this cartel formation (see "1st AGREEMENT" in fig. 1) the producers - receiving the Commission's deadline for initiating legal action - amended a modified agreement in January 1980 (with informal assistance from Commission Officials). This time, bilateral purchasing contracts (9) were agreed upon instead of the controversial national-production quotas. Now, VOUEL stopped legal procedures against the original cartel since this

was defined a "new" one. The new cartel was accepted and renewed in 1981 (see "2nd AGREEMENT in fig. 1) and 1982. By 1982, capacity had been reduced by 400,000 tons, with the Benelux countries suffering the greatest proportional reduction (54%), followed by Britain (41%), France (40%), Germany (22%) and Italy (20%).

Evaluation of the Pictured Events:

A Public Restructuring on European Level?

The events on the level of European politics amount to a fight between two groups of politicians, those in favour of a market solution in the case of crisis in an industrial sector and those in favour of a public policy solution (but on the European level). The actual restructuring process was not, in the end, as one would expect, a compromise between the two; rather it came down to being feasible of the industry's self-regulation plans. This came about without being noticed by either of the actors favouring the market solution or those advocating the public one.

The first and probably most successful policy-option taken by the Commission was the prohibition of state-assistance to the chemical-fibre sector (Art. 92-94). The discussion started on the 6th of December 1976 within the "Senior Officials Group for Industry" , and resulted in a global initiative by DG III. This initiative started with a letter, made up by DG IV, stating that

no more capacity-increases through state-aid could be tolerated. On the 22nd of June, 1978, the Commission took the decision to send the letter to the different Governments with a term of two years. This initial harmonious cooperation should not be interpreted as a "corporate" action but rather as a coincidence of interests of the three groups taking stand in the industrial restructuring of the sector, i.e. **(a)** those favouring a market solution (those countries with a liberal philosophy of market competition and the Directorate General for Competition), **(b)** those favouring an industrial-policy solution (those countries with a predilection for direct intervention and planning and the Directorate General for Industrial Policy) and **(c)** the industry itself with its associational system favouring a solution which was neither market nor public oriented.

Each of these three forces has its own dynamic:

(a) The market solution seemed to be grounded on merely ideological grounds. The politicians advocating it can safely be called more catholic than the pope since the firms themselves took a much more pragmatic stance in finding a solution, knowing as they did that a market solution would bring about the end of Europe's chemical-fibre industry.

A "competition policy" such as the prohibition of state-aid can be very effective in those cases where an inefficient firm

or sector in a national state is held alive with financial aid which enable it to sell its goods at a cheaper rate than other producers which may be working more efficiently. Here, a collectivity or community can be harmed by the misbehaviour of one or more national states. But this should not lead to the assumption that the leave-it-to-the-market approach always winds up restoring the perfect market system.

A measure such as prohibition of state aid is evidently grounded on the decision-makers' assumption that, this state intervention removed, the sector has been brought back to some kind of unhampered, free market. More often than not, however, state intervention occurs as a result of market failures instead of being one itself (10). As KNIGHTON pointed out at the Conference on Competition Policy of the European Community, it appeared that private enterprises can suffer heavily under the competition policy because they are made to compete AS IF they were in a truly competitive environment, when in fact there are still many barriers to competition within the Community (SMELLIE, 1983, p.279). Within the chemical fibre sector, the market never seems to lead to a perfect allocation of resources (see supra and JOLIET, 1981, p.221), even in those cases where that market is not "impeded" by the state. Leaving such a sector to its own dynamism, which obviously is not that of the free-play market, can lead to the disappearance of the more effective firms or to an even more increased concentration (JOLIET, 1981, p.407). For example,

multinationals can for a long time cross-subsidise production units which are working at a loss (as HOECHST, BAYER, ENKA, etc. did in this case) whereas this is not possible for smaller, less differentiated firms. Helping the latter by public finances, then, should not be considered indicative for their lesser effectiveness.

It has to be mentioned that the evolution (the "autonomous restructuring") of the chemical-fibre sector has led up to a point where neither Article 85 (refers to agreements of a vertical or horizontal kind between enterprises that by their restrictive nature are liable "to affect trade between member states and have as their object or effect the distortion of competition within the Common Market") nor Article 86 (refers to the "prevention of abuse by enterprises which have a dominant position within the market"), are capable of grappling with the structural aspect of the problem. Both articles possess an exclusively 'negative' scope, based as they are on the idea that removal of restrictive agreements resp. abuse of a dominant position, restores a free and equitable market. This must lead to the observation as made earlier by BALASSA, that "there is a certain duality in the proposals of the Commission which ... reflects the lack of a coherent policy on concentration and competition" (1973, p.214).

(b) Others state that alterations to industrial structure require a 'positive' Community policy (cf. ALLEN, 1983, p.211). However, what seems to be the problem here is the absence of a political institution capable of making binding decisions whenever it seems structurally impossible to leave the decision to 'neutral' market forces. This would provide an alternative to what ALLEN (1983, p.232) calls the "tenacity with which many of those working within the DG IV adhere to the exact letter of the law on relatively minor technical matters, whilst ignoring more serious judgements in politically sensitive areas, ... a bureaucratic desire not to rock the boat". This "bureaucratism", however, must not be overvalued as a 'dysfunctional' factor. The fact that the Treaty of Rome relies almost entirely on market integration, and made no provision for a coherent industrial policy, seems to be more important here and can at the same time explain the behaviour of the DG IV, at least partially.

Note that the Commission lately does seem to be shifting from a 'negative' interpretation of its powers in the competition sector - banning particular types of state-aid that might 'distort' the market - towards a more positive one, seeking to use its powers as established by the Treaty to develop a concerted European response to the particular problems of individual industries (see especially the 12th report on Competition Policy, 1982; pp. 158,183,185,191,194). The question remains whether the newly-formulated positions are politically attainable right now. A

worsening crisis leads to more nationalist, protectionist measures, whereas the new policy needs a great deal of consensus within the EC; obviously counter acting forces.

A much more radical solution for pursuing a global industrial policy could be the changing of the Treaty to avoid juridical obstacles in the future. This alternative has been tried out by the DAVIGNON-VOUEL proposal (cf. supra and JOLIET, 1981). What this proposal exactly tried to institutionalize was the 'state'-option for policy-making. It wanted to give the EEC the legitimate exercise of force towards industry.

Many of the actions of the Commission and especially of its most active part, DAVIGNON and his crew, can be interpreted within the framework of these plans towards changing the Treaty (see pp. 23-24).

In contrast to what is commonly said concerning this case, I happen to think that it was not DAVIGNON, as the Commissioner of industrial affairs, who came to reach an agreement between the 11 largest producers but rather they themselves, helped as they were by their organisation, the CIFRS. A statement also made by Fendel: "Die fachliche Leistung liegt im vorliegenden Fall... weniger bei der DG III-Mitarbeitern als vielmehr in der Kooperationswilligkeit der Unternehmen begründet" (1982, p.581). The "Kooperationswilligkeit" was not, however, perfect since the CIFRS did not seem to be capable of involving the Italians in the agreement, without which the production-reduction plans could

never be effective. This persuading of the Italians was just like the prohibition of state-aid, a conditio sine qua non for the industry's plans and at the same time for the overall scheme DAVIGNON had in mind (11).

The CIFRS addressed itself to BRAUN (DG III) on the 24th of October, 1977, asking for help. This time it really was the almost legendary resource of "influence" borne by the person of DAVIGNON (cf. see also FENDEL, 1981) which brought about the solution. A day after the addressment of the CIFRS, on the 25th of October, 1977, upon meeting the Italian Minister for Industrial Affairs DONAT-CATTIN in Esch in the matter of the steel industry, he also managed to open the possibility for contacts with the Italian Ministerial bureaucracy in the matter of the chemical fibres.

The impression which one gets here, i.e. of a DG III working itself to the bone for a particular interest-group (and as such corroborating the neo-marxist theory of integration) must strongly be relativized. Obviously this was a process of mutual exchange. The DG III helped the industry to the ingredients for a production-reduction recipe, which seemed workable at first, whereas the industry helped the DG III to a case through which it could prove that such solutions can be arrived at in collaboration with the industrial sector. Thus it was precisely this case which had to exemplify for DAVIGNON's plan for bringing about a change in the Treaty of Rome.

Even if a political institution or policy, capable of performing industrial policies, could have been created the question remains whether it could be more effective on an European level than on a national level.

We have argued that the problems of the chemical fibres are world-wide problems, hence the Community is for that reason no more an optimal policy-making unit than is the nation state - at least in this case - since the capacity reduction should be world-wide (JOLIET, 1981). A European public policy concerning industrial affairs would run the risk of adopting European protectionist measures (cf. Multi-fibre-agreement and STRANGE's (1979) conclusion for the steel, textiles and shipbuilding sectors), being exactly the opposite of the effect European integration used to have in the 1960s, when it clearly contributed to international trade liberalization.

(c) As I have already described in the private-restructuring part (p.13), the industry itself had a more pragmatic solution in mind than either the state or the market-options. A market solution was perceived as an act of self-destruction whereas at the same time apprehension concerning governmental action was expressed.

Notwithstanding the fact that there seemed to be a lot of action around the chemical-fibre sector in those days, the steps taken by the Commission, should not been seen as governmental regulation acts. Rather, it played the role of

"meta-regulator", i.e. regulating self-regulation, without being really aware of this. The Commission brought in resources which were very important to the self-regulation system of the industry. This was quite often expressed directly. An ICI representative for example, expressed in the explanatory debates on the 17th of March, 1977, his apprehension concerning governmental action. On the other hand he stressed the appreciation of DG III's influence on the competition directory (DG IV) whenever that would lead up to legalization of stabilization through self-imposed agreements (12).

Moreover, a comparison of the demands by the CIFRS as formulated in "The future of the Man-Made Fibre Industry in Western Europe" (1976) and the bilateral agreements of the EC with more than 30 export countries on "voluntary" limitations of textile-exports (regulation (EEC) Nr 3019/77 (30 dec 1977) gives a very harmonious picture.

All the EC's resources (legal, of influence, the simple fact of being a v.i.p. at the international level), which were indispensable for the industry's self-regulation plans, were being spent without the Community stating its own terms. This can only be explained by the fact that the EC was not aware of these non-governmental, but no less non-market regulation, while being busy in reaching its OWN solutions.

03. General Conclusion and Policy Implications

We started this paper with the introduction of more general categories for studying the restructuring of an industrial sector. I have drawn the distinction between autonomous, private and public forms of restructuring. These categories, initially introduced with the aim of arranging the complex set of factors in a more or less reviewable way, have turned out to possess more than solely descriptive value. I will now discuss this, and try to formulate some policy implications.

Firstly, I have described the process of so-called "autonomous" restructuring in the chemical fibre sector. The fact that "autonomous" or decentralised restructuring does not always and exclusively take the form of marginal changes, is a very important conclusion reached here.

Apart from the fact that competition stimulates creativity, innovation, technological development, economic growth, dynamism, economic flexibility and so on, it can, as we have seen, lead to overproduction, economic crisis, bankruptcy and massive lay-offs, detrimental to the well being of capitalists, workers and consumers. It has also been illustrated that such an overproduction can become more or less permanent, forcing business to sell at a price below the costs, thus forming a fatal threat to the industry.

Negative effects such as these, create the need for some intervention in the rules of capitalist competition. This can

take the form of intervention by an outsider such as the state (in my case the EEC) which means the initiating of a public-restructuring process. It can also take the form of the replacement of the "invisible hand" by a cartel-like organisation, or by regulation of business by voluntary associations, which can both be classified as private restructuring.

The transition from autonomous restructuring to this private form is a most interesting aspect for research. In this context, I have only been able to hint at some of the reasons for this evolution; a cross-national study could help us to understand better the logic of this transition.

The collectivity of competitors, or at least a substantial part of it, came to a formal contract. Such a self-regulation presupposes some kind of interorganizational concertation of the competitors. The participants got together to agree on collective goals and have made use of an agency which could monitor and control the observation of the rules that were mutually agreed upon (as did the CIFRS in this case).

The organisation of, and regulation by a group of competitors is not, however, self-evident and is far from an easy option for them. First of all, it requires the competitors to develop an interest in regulation and organisation. Secondly, they have to overcome serious "prisoner's dilemma" problems. The temptation to 'free-ride' on collective action is high in a traditionally competitive environment. That means that one tries to profit from the collective action of others without himself

sacrificing anything at all to it. Voluntary organisation and regulation only becomes possible when these kinds of problems are solved. In this case, they were apparently largely cleared up by the EC. This means that the Commission was at that moment able to assume the position of a strong political actor. This gave it the possibility, in theory, to enforce as 'public' a solution as possible within the 'self-regulation'-process of this industry.

However, the fact is that the restructuring of the European chemical fibre sector - after having shown signs of arriving at a private solution but with a probable public outcome - finished as an ordinary cartel with disadvantages for employees and consumers. This evolution has, in my opinion, to be related to the way in which the problem was perceived, and the way it emerged within the EEC. Empirical evidence shows that the possible action-modus of private-interest government was not seen as a possible policy-option by the European policy-makers. The discussion concerning modes of conduct constantly drifted between the two alternatives of market and state. Some individual countries in the EEC and some directives were in favour of a state solution (i.e. "public policy", in this case, industrial policy). The latter could only be made possible by changing the Treaty of Rome, which failed. Others were in favour of a market solution, seeing competition as a form of organisation as the solution to the general problem of order in the economy, which is not necessarily false. The circumstances (as described in the autonomous-restructuring part), however, rendered a "back to the

market" solution at the time of the crisis ineffective and even dangerous. On the other hand, the state solution seemed especially unfeasible at the Community level, for the various reasons given in the section on public restructuring.

If the EC had been aware of the existence of its resources as illustrated here, and if moreover it had perceived the third possible form of organising business (i.e. private interest government) as being a possible functional equivalent to the other two forms of organising business, market and state, then a more satisfactory solution for all the parties involved (EEC, members-states, unions, consumers,...) could have been arrived at. The thrust of the argument is that the EEC, through its resources, helped the industry without any form of mutual exchange. Instead of dealing with interest conflicts arising from the choice between market and state, the EEC could have concentrated on being a strong partner in the construction of a self-regulating system, avoiding at the same time criticisms, like the one made by S.STRANGE: "International organisations concerned with trade matters (e.g. GATT, OECD and EC), have functioned increasingly not as the administrators and executors of international agreed upon regimes but rather as would-be legitimators of deviant or strictly self-serving behaviour." (1979)

FOOTNOTES

- (1) For an exact description of the "chemical fibres" dealt with in this paper, see ANNEX 1, p.42
- (2) My sources of information are statistics (the annual reports of CIFRS and the June edition of TEXTILE ORGANON), an interview (with a staff member of the CIFRS in March 1984 in Paris), academic literature, press sources (esp. BUSINESS WEEK, FRANKFURTER ALLGEMEINE ZEITUNG, EUROPE, FINANCIAL TIMES, CHEMICAL AND INGENNEERING NEWS, WALL STREET JOURNAL, DIE ZEIT, CHEMICAL WEEK, VISION and HANDELSBLATT), reports of organisations such as the EC and the UNO and journals of business-associations (INDUSTRIE TEXTILE, TEX-TEXTILIS and CHEMIEFASERN).
- (3) For example capital intensity, large scale units, research and development, a traditional considerable amount of concentration/taking over leading to ever higher concentration, a remarkable shifting from the developed to underdeveloped countries, massively intruding in a world fibre market which was previously dominated by cotton producers, etc.
- (4) In his article, "The logic of capitalist collective action", drawing on the economic literature, BOWMAN (1982) defines eight market characteristics for which market cooperation is most likely. If firms are few and buyers large in number, orders are 'frequent, small and regular', demand is strong and inelastic with respect to prices, fixed costs are relatively low, entry is difficult and products are complex, then one can predict that there will be no need at the part of capitalists for an externally imposed reorganisation of their competitive game (BOWMAN, 1982, p.601). These are markets where the repeated occurrence of the prisoner's-dilemma situation may subsequently transform itself into a 'supergame' in which cooperation is the dominant strategy. The mentioned characteristics fit the chemical fibre industry very well.
- (5) The CIFRS was founded in 1950 in Paris. The aims are to improve, increase and develop the use of rayon, of other artificial fibres, synthetic fibres and the products made therefrom; they have contacts at the international level with other international organizations, whether governmental or professional. It consists of a General Assembly, a Managment Committee, a General Secretariat, working committees for economical, developmental and market research and statistics. The association has a staff of 16 paid collaborators. Its

members are national associations and individual producers (98) in 25 countries.

- (6) For the text of the Articles and Regulations cited in this paper, see ANNEX 2, p.46
- (7) A draft proposal which has the European Coal and Steel Community (Treaty of Paris) and the EEC transportation policy (1968) as precedents.
- (8) The most important were:
 - it was hard to see how production could be improved by reducing production capacities and and putting a stop to new investments;
 - it could have created a precedent - from then on any industry suffering from the vicissitudes of the market or government policy or the unpleasant consequences of its own past decisions could run to Brussels for permission to form a private cartel in the public interest;
 - by getting the Council of Ministers to intervene in a field where the Commission was solely responsible for applying the rules to particular cases, the proposal would have meant a step backwards at the international level;
 - cooperation in one segment of the chemical industry (that is, fibres) could spill over, via the "group effect", into other segments of the industry, already one of the most concentrated in the European Community;
 - once formed, even if there were a time limit on the agreement, it might prove difficult to disband such a cartel once the crisis was over. Market sharing would become even more of a habit than it already was and the competitive spirit might die. If so, the industry would cease to be internationally competitive, and would soon need permanent protection;
 - the cartel was not accompanied by a logical plan to eliminate the least efficient plants in the fibre industry. Rather, by making each firm "share" the burden of cutting over-capacity "fairly", the most efficient firms would have had to do most of the cutting.
- (9) Companies purchase goods from other firms and then resell them on the open market.
- (10) I am not referring here to a direct link; rather, market failures lead to downfall of entire sectors or firms within states, whereupon the state intervenes, incited by, for example, electoral considerations.
- (11) Another important factor here are also the different Multi Fibre Agreements (MFA). The MFA is a global agreement laying

down the principles for expansion in trade. Between each country or, in the case of the EC, group, bilateral quotas are negotiated between each supplier and importer for every product that is thought to create disruptive conditions in the importer's country. Across the three MFA's, the EC gravitated from a halfhearted position in the first to a stronger protectionist stance in the second; and the last period, 1980-1983, saw the development of an even more protectionist position in the negotiations for the MFA3.

To my case the MFAs are important, in the same way as the state-aid stop, since they are very functional for the succeeding of an organised action of the chemical fibre industry. I mention them here only briefly since they have directly not something to do with the studied case.

- (12) See also the conclusion of a COMITEXTIL/CIFRS report: "In short, the fibres arrangement constitutes an instrument by which the industry can return to the situation of market economy - from which it was diverging to a dangerous degree. We trust that the national governments will understand this fact and that if necessary, the EC-Commission will be there to recall it to them." (p. 10)

ANNEX 1: Description of the sector's product: Chemical Fibres.

If we exclude glass, steel and other metal threads, asbestos and carbon fibres, which principally have industrial uses, the main man-made fibres used in apparel and within the home, can be split in two main groups - cellulosics and non-cellulosic fibres.

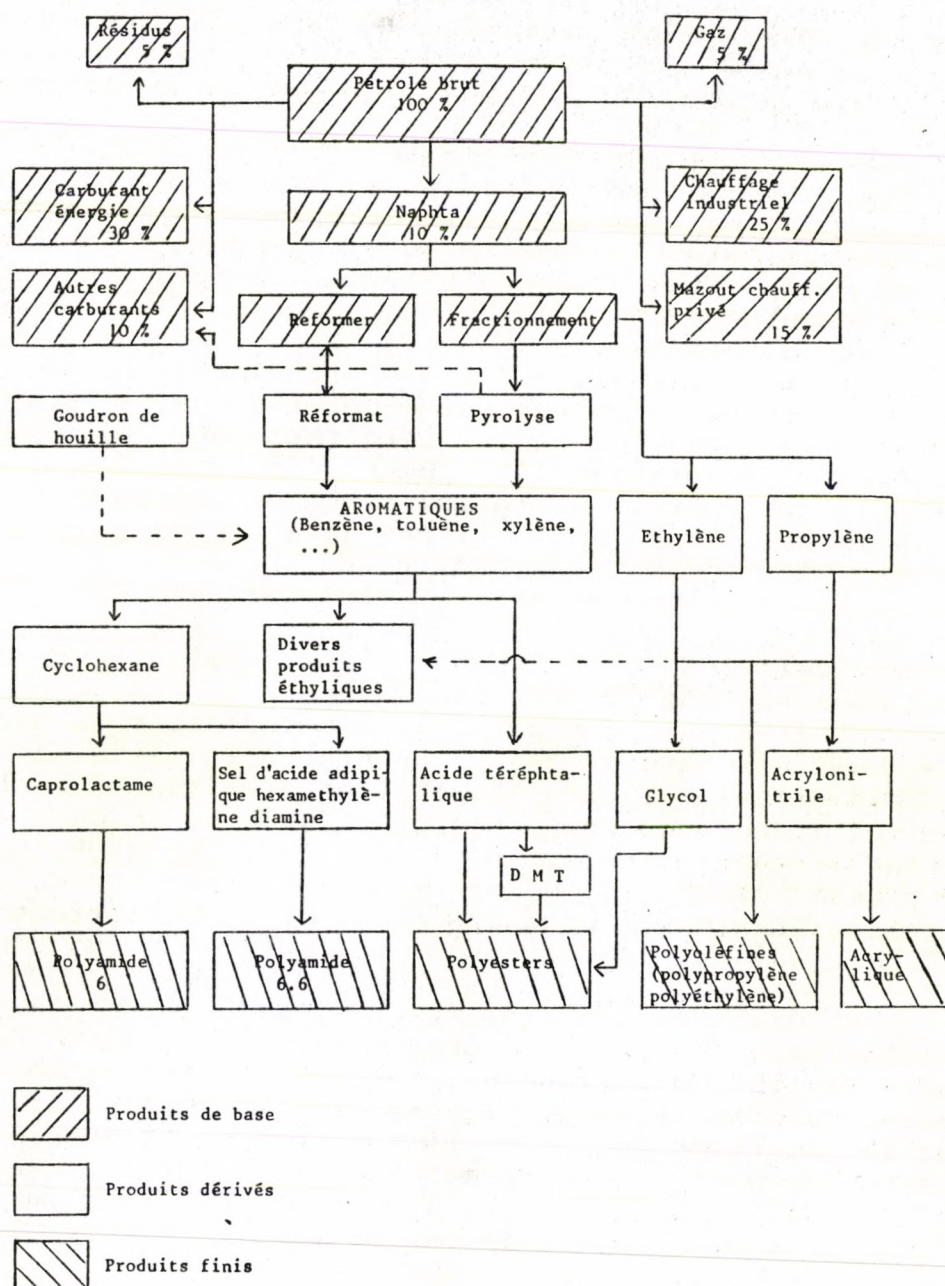
Cellulosics are produced from plant matter, normally softwood pulp which is processed into small sheets for the industry. Basically, these are dissolved in various chemicals (caustic soda is the main one) to form a liquid which is forced through spinnerets (holes) to form filaments which solidify when leaving the spinneret. Viscose rayon and cellulosic acetate yarns are produced in this way. Thus the cellulosic fibre industry is principally based on a renewable resource. In terms of the volume of its use, viscose rayon is the leading cellulosic fibre. Like the other cellulosic fibres its production is principally based on wood pulp, although other renewable cellulosic material such as cotton linters and bamboo can be used. Cellulosic fibres have a wide range of end-uses as clothing, household items and in industry.

The non-cellulosics synthetic (or chemical) fibre industry is based upon the use of non-renewable resources. The production is based upon the use of plastic-type materials obtained usually from oil, coal or natural gas. The non-cellulosics can be divided in two main groups: staples (parts that are limited in the length and give yarns through spinning) and filaments (endless parts). Each of these can be broken down in Polyamid, Polyester and Acrylic. In my research this group of products forms the centre-point. The division in three products refers to different sources and different ways of production as well on different uses.

Dimethylterephthalate (DMT), acrylasitrile and caprolactame are the principal intermediate materials for producing the different synthetic fibres. These intermediary products are all finally oil derivatives. The refining of crude oil and the fractioning, bound as both are to the subsequent chemical this render possible the producing of chemical fibres. The global annual consumption of crude oil in Western Europe amounts to approx. 600 millions of tons. Of this, 10% is used for chemical industry:

9% for different chemical materials
1% for synthetic fibres

Fig. 1 : From petroleum to fibres



Source : CHIMITEX, 1983

Polyamides ("Nylon") are produced by first manufacturing a nylon salt which is melted, extruded in a ribbon and broken into chips. These "plastics" chips are then used for spinning nylon filaments. The chips are heated electrically, the melt filtered, it is cooled by the air and forms filaments which may be used to produce yarns.

Nylon 66 was discovered in the USA in 1935 by Dr Carothers, a scientist working for Du Pont chemical Company. Du Pont commenced commercial production of nylon not long after. Nylon 6 was the polyamide adopted at first in Germany. The properties of the polyamides are slightly different. The largest proportion of world production of polyamides today is of Nylon 66 but production of Nylon 6 is not insignificant.

Polyester is manufactured mostly from oil derivatives which are processed from polymer chips. Polyester fibre is formed by melting these chips and forcing the molten polymer through a spinneret. The air solidifies the individual filaments almost immediately as they leave the spinneret and the filaments are drawn together to form yarn and wound on to cylinders.

Polyester was discovered in Britain by Whinsfield and Dickinson - of the Calicop Printers' Association - following up Carother's work. It was first manufactured in the USA by Du Pont in 1949 and in the following years in the U.K. by Imperial Chemical Industries (ICI). Du Pont marketed its polyester under the trade name "Terylene". Soon after its commercial production - which started in 1950 - polyester began to capture a major share of the non-cellulosic fibre market.

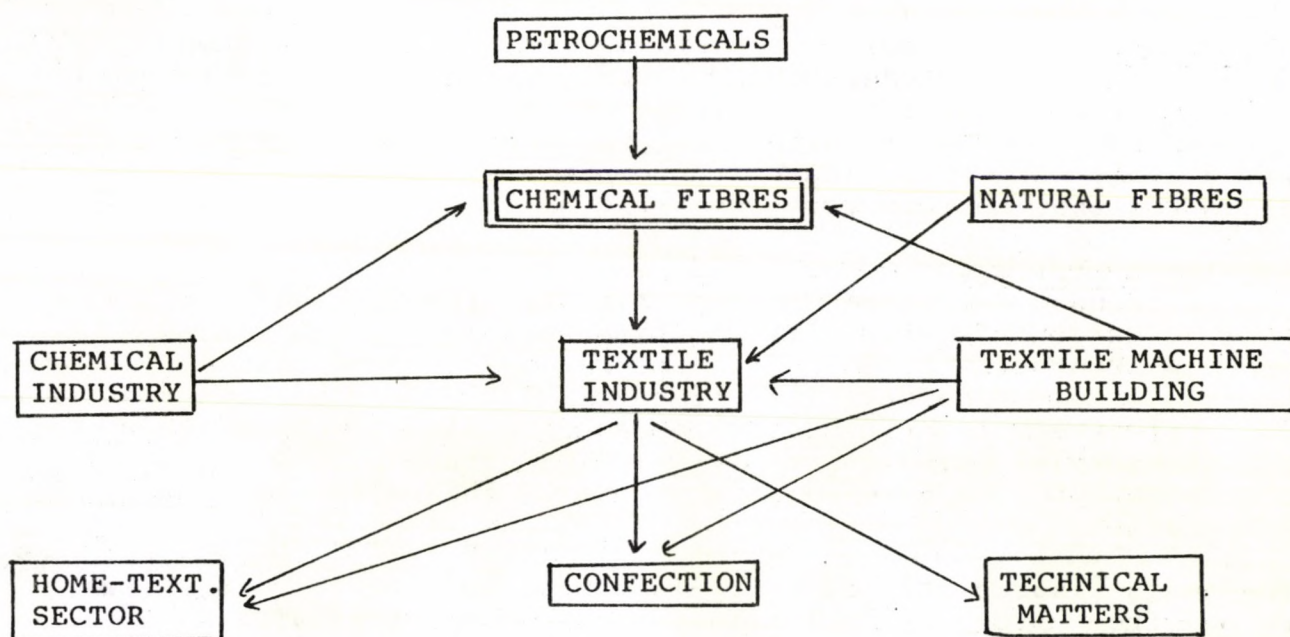
The main ingredient of acrylic is acrylonitrile produced, as a rule, from propylene which in turn is normally manufactured from natural gas or petroleum. But it should be noted that coal can also be used to produce acrylic fibres. Very often acrylic is substantially modified by the use of copolymers such as vinyl chloride and vinylidene chloride. The resulting fibres are described as modacrylics. The spinning of acrylics is more complicated than the spinning of polyamides and polyesters. The compound to be used for spinning must be dissolved in solvents.

Acrylic fibre was first discovered and developed by Du Pont in the USA in the early 1940s, though commercial scale production did not begin until 1950.

A close connection as we find between chemical fibre-producers and the chemical industry, one can also detect at the other side of the chain i.e. the textile industry. A sharp distinction between the chemical fibre and textile industry can neither be made since the fibre producers through the spinning of

filaments become active in a traditional sphere of the textile-industry (Texturing). Also the sector textile-machines is influenced by the developments of the chemical fibres. The intensive information about applications to the textile industry by the fibre producers plays an important role.

Fig. 2: The textile production-chain and its relation to other branches.



Source: CIFRS, 1976, p.9

ANNEX 2: Description of the Articles and Regulations dealt with in this paper.

Article 85

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decision by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings;
- any decision or category of decisions by associations of undertakings;
- any concerted practice or category of concerted practices;

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 86

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 92

1. Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

2. The following shall be compatible with the common market:

- (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
- (b) aid to make good the damage caused by natural disasters or exceptional occurrences;
- (c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division.

3. The following may be considered to be compatible with the common market:

- (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
- (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;

(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. However, the aids granted to shipbuilding as of 1 January 1957 shall, in so far as they serve only to compensate for the absence of customs protection, be progressively reduced under the same conditions as apply to the elimination of customs duties, subject to the provisions of this Treaty concerning common commercial policy towards third countries;

(d) such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission.

Article 93

1. The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the common market.

2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the common market having regard to Article 92, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission.

If the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 169 and 170, refer the matter to the Court of Justice direct.

On application by a Member State, the Council, may, acting unanimously, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the common market, in derogation from the provisions of Article 92 or from the regulations provided for in Article 94, if such a decision is justified by exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known.

If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.

3. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market having regard to Article 92, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

Article 94

The Council may, acting by a qualified majority on a proposal from the Commission, make any appropriate regulations for the application of Articles 92 and 93 and may in particular determine the conditions in which Article 93 (3) shall apply and the categories of aid exempted from this procedure.

Council Regulation No.17/62 (CUNNINGHAM, 1973)

...

18-16 **ARTICLE 15**

Fines

1. The Commission may by decision impose on undertakings or associations of undertakings fines of from one hundred to five thousand units of account where, intentionally or negligently:

- (a) they supply incorrect or misleading information in an application pursuant to Article 2 or in a notification pursuant to Articles 4 or 5; or
- (b) they supply incorrect information in response to a request made pursuant to Article 11(3) or (5) or to Article 12, or do not supply information within the time limit fixed by a decision taken under Article 11(5); or
- (c) they produce the required books or other business records in incomplete form during investigations under Article 13 or 14, or refuse to submit to an investigation ordered by decision issued in implementation of Article 14(3).

2. The Commission may by decision impose on undertakings or associations of undertakings fines of from one thousand to one million units of account, or a sum in excess thereof but not exceeding ten per cent of the turnover in the preceding business year of each of the undertakings participating in the infringement where, either intentionally or negligently:

- (a) they infringe Article 85(1) or Article 86 of the Treaty; or
- (b) they commit a breach of any obligation imposed pursuant to Article 8(1).

In fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement.

3. Article 10(3) to (6) shall apply.

4. Decisions taken pursuant to paragraphs 1 and 2 shall not be of a criminal law nature.

5. The fines provided for in paragraph 2(a) shall not be imposed in respect of acts taking place:

- (a) after notification to the Commission and before its decision in application of Article 85(3) of the Treaty, provided they fall within the limits of the activity described in the notification;
- (b) before notification and in the course of agreements, decisions or concerted practices in existence at the date of entry into force of this Regulation, provided that notification was effected within the time limits specified in Article 5(1) and Article 7(2).

6. Paragraph 5 shall not have effect where the Commission has informed the undertakings concerned that after preliminary examination it is of opinion that Article 85(1) of the Treaty applies and that application of Article 85(3) is not justified.

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